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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

VINCENT RODRIGUEZ, SR., Plaintiff and Respondent, v. MARK PADILLA, Defendant and Appellant.	B169431 (Los Angeles County Super. Ct. No. BC267584)

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas L. Willhite, Jr., Judge. Affirmed.

Kim D. Blanchard for Defendant and Appellant.

Kirt J. Hopson for Plaintiff and Respondent.

Plaintiff Vincent Rodriguez, Sr., sued defendant Mark Padilla, who misrepresented himself as a lawyer and purported to help plaintiff in a real estate matter. The jury found intentional misrepresentation and fraud by concealment, and it awarded compensatory damages for loss of use of the property and emotional distress ($199,000), attorney fees ($70,000), and punitive damages ($250,000). Contrary to defendant's contentions: substantial evidence supports the finding that plaintiff was unaware of the falsity of defendant's fraudulent representation; the trial court did not abuse its discretion or otherwise err in precluding from evidence three documents not disclosed during pretrial discovery; and the punitive damages awarded were not excessive.

FACTUAL AND PROCEDURAL SUMMARY

In March of 2001, plaintiff, who could not read or speak English, met with defendant at the law offices of Eiser & Associates. Defendant worked at the law office as an administrator, but he falsely represented to plaintiff that he was a lawyer. Plaintiff needed legal assistance to initiate an unlawful detainer proceeding. He wanted to evict his son from the house, located on Walnut Drive in Los Angeles, in which the son continued to live after plaintiff's former wife had died. Plaintiff wanted his son out of the house so he could repair it and at some future time eventually sell it. Sale of the house was also required by the terms of the 1994 divorce agreement between plaintiff and his now deceased former wife. However, plaintiff and his former wife had privately agreed she could nonetheless reside in the house indefinitely because she was ill.

Unlawful detainer litigation ensued, resulting in a stipulated judgment July 23, 2001, requiring the prompt listing of the property for sale and permitting the son to stay there until the close of escrow. However, according to plaintiff, on the day of the court proceeding resulting in the stipulated judgment, he never agreed to that arrangement and denied signing any document. In fact, he came away from that hearing believing he had lost. Defendant told plaintiff that he would have to sell the property and that if he did not, it would go through probate where he would not receive anything because his former wife's interest would go to the children and there was a lien of $30,000 against him on the property. Defendant then had plaintiff sign some papers, purportedly to process the eviction.

In the ensuing months plaintiff met with defendant several times a month. Defendant informed him of another court proceeding and instructed him to obtain a power of attorney, authorizing his daughter to appear in court for him when he was not able to do so. Plaintiff did so. Defendant then sent plaintiff to meet Oscar Flores, from a real estate agency, to sign papers to take the former wife off "the paper" and "off the deed." Flores told plaintiff he was waiting for him, did not ask him any information, and told plaintiff to take the papers to the Hall of Records in Norwalk.

Plaintiff met defendant one last time when they went to an escrow office where plaintiff signed some documents, purportedly necessary to take to court that afternoon. When plaintiff's daughter asked why they were at an escrow office, defendant asserted he had bought the office and was going to put up an "attorney at law" sign, as well as a sign indicating real estate and income tax services. Thereafter, plaintiff learned that his son had been evicted from the house. When plaintiff later went to the house, a man inside the house showed and read to him a letter from the Office of Eiser & Associates, indicating that the property had been sold to "Gladys Pineda."

Plaintiff and his daughter became very upset when they realized "the house had been stolen from us." Plaintiff's intention was to move into the property after his wife died and after his son vacated the house, and then to repair the house and live in it. He did not intend to sell it until sometime later.

Plaintiff never expressed to defendant any desire to sell the property and, in fact, told him he "would not sell it." Plaintiff did not agree to any terms of escrow with Star Escrow, and he received absolutely no money from the sale of the house. Plaintiff did not recall signing the stipulation that was filed in the unlawful detainer action, and he did not believe the signature on the stipulation was his.

A forensic fingerprint identification specialist compared plaintiff's fingerprint with a facsimile copy of a notary public log which purportedly contained plaintiff's print. The comparison revealed the absence of "any consistent creases." He thus concluded that the thumbprint on the notary log pertaining to the transfer of real property from plaintiff to Gladys Pineda was not the thumbprint of plaintiff.

An escrow officer at Star Escrow, the entity which handled the sale of plaintiff's property, indicated that the escrow instructions for the sale specified a payment of $40,000 to plaintiff by the buyer "outside of escrow." The escrow officer never saw any documentation that plaintiff was ever paid that amount. When plaintiff came with defendant to the escrow office, the officer did not discuss the instructions with plaintiff, nor did she know whether plaintiff knew the papers he signed that day were escrow instructions. The escrow officer did not witness plaintiff sign the escrow instructions and did not witness the notarization of his signature.

According to defendant, plaintiff had been ordered by the judge in the unlawful detainer proceeding to sell the property. Plaintiff then entered into an agreement to sell the property through CA/MEX Realty, a company with which defendant was associated as a licensed real estate agent. However, the stipulated judgment in the unlawful detainer proceeding provided, in pertinent part, that the property would be listed for sale with Brabant Realty or Del Sol Realty.

As explained by defendant, when no sale ensued through CA/MEX Realty, he spoke with several "investors," including Luis Bocanegra, who were interested in purchasing the property. Defendant instructed Star Escrow to prepare escrow documents for a sale of plaintiff's property to a buyer named "Gladys Pineda," who acted as a straw buyer. Plaintiff and his daughter were present in the escrow office when plaintiff signed the pertinent documents, including a deed transferring the property from plaintiff to Pineda. Purportedly, plaintiff orally agreed to pay defendant a "finder's fee" of $5,000 for locating a buyer for the property.

The reality of the sale was that although Pineda was identified on all papers as the buyer, "the buyer all the time" was actually Bocanegra. Defendant understood that Bocanegra would get the property for $40,000, would pay off a lien on the property, and then would repair and sell the property. Bocanegra was to pay the $40,000 to plaintiff, pursuant to the terms of a note, payable in 18 months. The lien "fell off" the property and thus did not have to be paid, a "watchman" for the property lived at the house for a while, and Bocanegra then listed the house for sale. Bocanegra claimed he gave plaintiff $40,000 "in cash," got back the note, and tore it up.

Plaintiff sued defendant, seeking imposition of a constructive trust and alleging fraudulent representations and concealment concerning the sale of his home. The jury's special verdict found defendant made intentionally fraudulent misrepresentations and fraudulently concealed material facts. The jury returned a verdict in favor of plaintiff and found defendant liable for fraud as a fiduciary and assessed $24,000 of economic damages, $175,000 of noneconomic damages, and $70,000 in attorney fees. At the punitive damages phase of the trial, the jury assessed $250,000 in exemplary damages.[1] The trial court denied defendant's motion for a new trial, noting in part that "the case essentially boiled down to credibility issues, who [was] to be believed."

DISCUSSION

I. Substantial evidence supports the jury's finding that plaintiff was unaware of defendant's fraudulent representation.

"When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment." (*Scott* v. *Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465.) In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment if possible. When a judgment is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. (*Western States Petroleum Assn.* v. *Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford* v. *Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.)

"The ultimate determination is whether a *reasonable* trier of fact could have found for the [plaintiff] based on the *whole* record." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, italics in original.) Where several theories of liability

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1 The court also ordered plaintiff's real property restored to him.

are presented to the trier of fact, a verdict will be sustained as long as any one theory is supported by substantial evidence, despite possible insufficiencies as to the other theories. (See *Tavaglione v. Billings* (1993) 4 Cal.4th 1150, 1157.)

Defendant contends that insufficient evidence supports the jury's special verdict finding that plaintiff was "unaware of the falsity of the representation." Specifically, defendant points to the complaint, which alleged that the false representation was that plaintiff had to execute grant deed documents in favor of Pineda to enable defendant to proceed with the lawsuit to evict plaintiff's son, and that the true facts were that the execution of the grant deed in favor of Pineda was unnecessary to any eviction proceeding or to establish plaintiff's title to the property.

Defendant emphasizes that the unlawful detainer judgment settlement, of which the trial court took judicial notice, provided for the sale of the property. And defendant urges, for example, that plaintiff offered no explanation for his purported lack of knowledge of this fact, and emphasizes that plaintiff was aware that a divorce agreement had required him to sell the house. Defendant thus concludes that there was insufficient evidence for the jury's finding that plaintiff was unaware of the efforts to sell the property, which would have necessarily entailed the execution of a grant deed.

As indicated in BAJI No. 12.31, an element of the cause of action of fraud by intentional misrepresentation is that plaintiff was "unaware of the falsity of the representation" made by defendant. Indeed, a plaintiff must "reasonably [have] believed [that the misrepresentation was] true." (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 422.)

Here, defendant's reliance on plaintiff's supposed execution of a stipulation filed in the unlawful detainer action is unavailing. The stipulation was limited by its language to an agreement to list the property with only two named real estate agencies, neither of which was the agency with which defendant had plaintiff list his home. Nor is there any reasonable inference from the document that plaintiff intended to sell to Pineda. Nor, most significantly, did plaintiff recall signing this document--a document with a signature which plaintiff testified did not appear to be his signature.

Plaintiff's ignorance of the nature of the escrow instructions and the grant deed is further supported by uncontested evidence that he could not read English. And he had no intention to sell the property at the time he signed the escrow instructions and the grant deed; his intention was to sell the property at some future time after living in it and making repairs. His conduct was inconsistent with a present intent to sell the property, and he testified he received no consideration for the sale of the property.

Thus, substantial evidence and reasonable inferences support the conclusion that plaintiff was unaware of the falsity of defendant's fraudulent representation that plaintiff had to sign a grant deed in favor of Pineda to evict plaintiff's son or to establish his title to the property. It is thus unnecessary to address plaintiff's alternative position that since defendant does not challenge the sufficiency of the evidence of fraud by concealment, the verdict must be upheld as viable under this alternative and unchallenged theory of liability, which the jury's special verdict found true.

II. There was no evidentiary error warranting a reversal of the verdict.

Defendant contends the trial court erred in excluding from evidence three documents offered as exhibits. The court precluded their admission into evidence because they had not been produced in pretrial discovery. The following three documents were at issue: exhibit 58, a purported power of attorney given by plaintiff to defendant authorizing him to sell the property; exhibit 59, a purported listing agreement given by plaintiff to defendant as a real estate agent to list the property; and exhibit 105, a letter purportedly signed by plaintiff's daughter to defendant's law office which inquired into the status of the sale of the property.

The trial court ruled that exhibits 58 and 59 fell within the scope of plaintiff's pretrial document request, which called for documents reflecting, referring to, or pertaining to any work performed by defendant for plaintiff. The trial court later applied a similar ruling to exhibit 105. However, as defendant acknowledges, the trial court permitted testimony relating to these documents.

According to defendant, the three documents did not fall within the scope of the discovery request because they did not relate to any work actually performed by defendant, and the trial court erred in giving an overly broad interpretation of the ambiguous term "work."

Apart from defendant's failure to cite any legal authority to support his position (see *Sprague v. Equifax* (1985) 166 Cal.App.3d 1012, 1050), we find the trial court did not abuse its broad discretion (cf. *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479) in interpreting the discovery request and ruling on the inadmissibility of the documents. Moreover, since the trial court permitted plenary testimony relating to these documents, any error in refusing to admit them into evidence was nonprejudicial.

III. The punitive damages awarded by the jury were not excessive.

A plaintiff seeking punitive damages must prove by clear and convincing evidence that the defendant acted with malice, fraud or oppression. (Civ. Code, § 3294.) In reviewing whether substantial evidence supports a punitive damage award, an appellate court must determine if the record discloses clear and convincing evidence which is reasonable, credible, and of solid value to justify the award. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891-892; see *In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

Under settled principles, ". . . our review of punitive damage awards rendered at the trial level is guided by the 'historically honored standard of reversing as excessive only those judgments which the entire record, when viewed most favorably to the judgment, indicates were rendered as the result of passion and prejudice. . . .' [Citation.]" (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910, 927.) In determining whether an award is excessive courts apply three criteria: (1) the particular nature of the defendant's acts in light of the whole record, (2) the amount of compensatory damages awarded, and (3) the wealth of the defendant. (*Id.* at p. 928; see also *State Farm Mut. Auto Ins. Co. v. Campbell* (2003) 538 U.S. 408, 418 [using as "guideposts" (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the harm suffered by plaintiff and the punitive damages awarded; and (3) the difference between the punitive damages awarded and the civil penalties permitted in comparable cases].)

The key question is whether the amount of damages awarded exceeds the level necessary to properly punish and deter. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 110.) "Thus, '. . . the function of deterrence . . . will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort. [Citations.] By the same token, of course, the function of punitive damages is not served by an award which, in light of the defendant's wealth and the gravity of the particular act, exceeds the level necessary to properly punish and deter.' [Citation.]" (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1166.)

In the present case, defendant had income from wages and his spouse of $8,500, assets of $488,500, debts of $324,000, and therefore a net worth of approximately $164,500. Defendant thus argues that because the punitive damages award of $250,000 substantially exceeds his stipulated net worth, the award was indicative of passion and prejudice against defendant and cannot be sustained. (See *Storage Services v. Oosterbaan* (1989) 214 Cal.App.3d 498, 516.) Several cases have observed that punitive damages "generally" should not exceed 10 percent of the defendant's net worth. (*Id.* at p. 515; *Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1596.)

Nonetheless, the amount of the punitive damages award in relation to the defendant's net worth is only one factor to consider in determining whether the award "'exceeds the level necessary to properly punish and deter.'" (*Adams v. Murikami, supra,* 54 Cal.3d at p. 110.) Net worth is not the only permissible standard, as it is "subject to easy manipulation." (*Lara v. Cadag* (1993) 13 Cal.App.4th 1061, 1065, fn. 3.) The level at which the award becomes suspect is when its effect is to "financially destroy[] a defendant." (*Adams v. Murikami, supra,*. at p. 112.) Although defendant points to the oft-cited 10 percent rule of thumb, "case law has not established any specific numerical percentage of net worth as constituting the upper permissible limit for the amount of a punitive damages award." (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1539 [punitive damages approximately 25 percent higher than net worth].)

Here, the punitive damage award was high, but defendant points to no evidence that it will bankrupt him or inflict an *undue* hardship. In view of the nature of the defendant's acts in light of the whole record, as well as the amount of compensatory damages awarded, and the net wealth of the defendant (see *Neal v. Farmers Ins.*

Exchange, supra, 21 Cal.3d at p. 928), we cannot say the damages complained of exceed the level necessary to properly punish and deter.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

NOTT, J.

DOI TODD, J.